

CALIFORNIA GAMBLING CONTROL COMMISSION
INITIAL STATEMENT OF REASONS
CGCC-GCA-2022-01-R

HEARING DATE: **None Scheduled**

SUBJECT MATTER OF PROPOSED REGULATIONS: Request for Regulations

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18:
Section 12008

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the Gambling Control Act (Act).¹ The Commission is authorized to adopt regulations as necessary to implement the Act.

Government Code sections 11340.6 and 11340.7 provide a process by which a member of the public can petition a state agency to consider the adoption, amendment, or repeal of a regulation. These statutes include timelines and requirements; however, they lack the specificity to be effectively implemented without clarification. This proposed action will provide the clarification necessary for the Commission to receive and consider these petitions.

PROBLEM ADDRESSED:

Government Code sections 11340.6 and 11340.7 provide a process that lacks the clarity for proper implementation:

Government Code section 11340.6 provides that when a petition is submitted it must clearly and concisely provide the substance or nature of the regulation, amendment, or repeal requested. The statute uses terms like “clearly,” “concisely,” “substance,” and “nature” but these terms are not specific enough for the Commission to consistently examine each petition to determine if they meet the requirements of the statute.

Government Code section 11340.7 provides a timeline for a state agency’s review, which on its face appears to be impossible to meet in any way other than to deny every petition. Pursuant to Government Code section 11340.7, a state agency has 30 days to notify the petitioner of either the denial of their petition or that the state agency will schedule the matter for a public hearing. On its face, “schedule the matter for public hearing,” pursuant to Article 5 (commencing with Section 11346) would seem to mean the

¹ Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.

publishing of a public hearing to receive comments as part of the issuance of a Notice of Proposed Action and a 45-day comment period. However, fulfillment of that interpretation within 30 days is impossible. The statutory requirements to have a Notice of Proposed Action published in the Notice Register takes more than 30 days. Therefore, the requirement to “schedule the matter of public hearing” must mean something else; however, what that something else might be is unclear without regulations.

PURPOSE:

This proposed action has been prepared to make specific the process by which a petition can be submitted to the Commission to request the adoption, amendment, or repeal of a regulation pertaining to the Act.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed action will have the benefit of providing the people of California with a clear method to participate in this aspect of the rulemaking process by providing the opportunity to have any ideas to adopt, amend, or repeal a regulation considered by the Commission through a consistent and feasible process.

PROPOSED ACTION:

This proposed action will make changes within the California Code of Regulations, Title 4, Division 18 as follows:

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

Amend 12008. Request for Regulations.

Section 12008 provides a process by which a person can submit a petition to the Commission for the purposes of requesting the consideration of the adoption, amendment, or repeal of a regulation. This section provides what is required to be submitted along with the timeline for review.

Subsection (a) provides that a person may submit a petition, resubmit an incomplete petition, or request reconsideration of a previously submitted petition by using the form Petition for Adoption, Amendment, or Repeal of Regulation, CGCC-CH1-05. Using a form provides a person an easy and clear method of submitting their request to the Commission and ensures that the Commission receives petitions in a consistent manner to allow for easy review and consideration.

The form Petition for Adoption, Amendment, or Repeal of Regulation, CGCC-CH1-05, is a new form. It provides the information and instructions necessary for a person to submit a petition. The instructions include:

- That the form can be submitted by either mail to the Commission’s headquarters or by email to the Legislative and Regulatory Affairs Division. Additionally, it provides an option for the petitioner to receive any communications via email. This information is

necessary so that the petitioner knows how to submit their petition. Additionally, as this petition process is outside of the Commission's normal application and designated agent process, an email selection box has been provided as the Commission may not know the petitioner's preferences and the requirements of Section 12006 only allow the Commission to provide notices via email if requested.

- The requested adoption, amendment, or repeal of regulations must be provided clearly and concisely. This is a restatement of part of Government Code section 11340.6 and is provided so that the petitioner is aware of the requirement when completing the petition.
- When completing the form, the petitioner can indicate "N/A" if a section does not apply to their request. Additionally, the form provides a notification that failure to provide the requested information may result in the petition being determined to be incomplete or denied. This notification is necessary so that the petitioner can clearly respond to the request as it is applicable and for the Commission to best understand when a petitioner might have intentionally as opposed to unintentionally left a section blank, as that will assist the Commission in the determination of whether an application is complete or incomplete.
- Directions are provided for Section 3 that indicate that the specific regulatory language must be provided. This requirement ensures that the specific adoption, amendments, or repeals are clearly provided to the Commission in their entirety for consideration. Instructions are provided on how the petition should be formatted. The format required is the commonly accepted format for both regulation and statutory proposals and will ensure that the Commission is able to clearly recognize and understand the proposal.
- Directions are provided for Section 4 that indicate the petitioner must provide a description of the specific regulatory changes. This includes a general statement explaining the purpose and goals of the petition, along with the necessity, purpose, and goal for each specific part of the proposal. This information will help the Commission determine if the proposal will be denied or scheduled for a public hearing based upon the merits of the request. Additionally, should the petition be scheduled, the Commission will be required to provide this information as part of the required Initial Statement of Reasons and other documentation required as part of the scheduling. Finally, these instructions recommend that the petitioner include a statement explaining any anticipated benefits of the proposal and what types of the costs might be incurred by the Commission, Bureau, industry, or others as a result of the approval of the petition. While this information is not specifically addressed in Government Code sections 11340.6 or 11340.7, and does not facilitate the Commission's clear understanding of the petition, such information will be required should the Commission determine the request will be scheduled for a public hearing as part of the Initial Statement of Reasons and other required documentation.
- Finally, the instructions provide that all information be in blue or black ink and that if space is insufficient additional pages may be submitted. These instructions are necessary to ensure that the submitted petition is both complete and legible.

- Section 1 requires the petitioner’s contact information. This is necessary so that the Commission can provide the required notices and communications as required by the statute.
- Section 2 requires the type of the petition; is the petition a new petition (initial), a resubmittal of an incomplete petition, or the reconsideration of a previously decided petition. Additionally, if a resubmittal or reconsideration, the form requires the petition’s unique identifying number. This information is necessary to assist the Commission to understand the type of request and be able to reference any past documentation, if relevant.
- Section 3 requires the sections to be repealed and amended. This listing of existing regulations allows the Commission to understand the basic scope of the petition. Additionally, there is a section for the specific adoption and amended language to be provided, as previously discussed in the form’s instructions.
- Section 4 requires the reason for the request. This provides the space to provide the general and specific descriptions as discussed previously in the form’s instructions.
- Section 5 requires the statutes that provide the Commission the authority to adopt the proposal along with the statutory sections that would be implemented, interpreted, or made specific. This information would not only be required of the Commission to include in the notes section of each regulation, but is also required of the petitioner in Government Code section 11340.6(c).
- Section 6 requires the petitioner to acknowledge the requirements of the petition; provides information about what could result from the petition (specifically that the petition could be denied, approved in part, or that the Commission may make additional adoptions, amendments, or repeals); and provides notice that even should the petition go through the rulemaking process it is still possible that the Commission will ultimately choose to not adopt the proposal. This is necessary to inform the petitioner of the possible outcomes of their request.

Subsection (b) provides a restatement of the requirements of Government Code section 11340.6. This has been provided so that all requirements are present in Section 12008 and a petitioner is not expected to review Government Code section 11340.6 to understand its requirements.

Subsection (c) provides that within 10 business days of receipt of the petition, the Executive Director will send an acknowledgement of receipt of the petition to the petitioner. This subsection provides clarification to the requirement provided in Government Code section 11340.7(a) that “[u]pon receipt of a petition... a state agency shall notify the petitioner in writing of the receipt...” As the statutory requirement lacks the specificity to directly follow, this subsection is necessary to provide clarification that notification will be provided within 10 business days, that the Executive Director is responsible for the state agency’s notification, and

that written notification will be provided pursuant to the Commission's notification regulations (Section 12006).

Subsection (d) provides that within 30 calendar days of receipt of the petition, the Executive Director will review the petition, assign it a unique identifying number, and provide that number to the petitioner. The 30-day timeline is consistent with the requirements of Government Code section 11340.7(a). The issuance of a unique identifying number is so that any later related submissions, either a resubmittal due to a previous determination of incompleteness or due to a request for reconsideration, can be effectively identified as related to this initial application. Additionally, the subsection provides that the Executive Director will do one of the following:

1. Paragraph (1) provides that if the Executive Director determines that the petition is incomplete, the petition will be returned to the petitioner with an explanation of how it is incomplete. This determination means that the Commission has not been provided with information that meets the minimum requirements of Government Code section 11340.6 or Section 12008 and therefore the Commission does not have the information necessary to either deny, approve in part, or approve the petition based on the merits of the petition, as required by Government Code section 11340.7(a). Notifying the petitioner of this is necessary in order to provide the petitioner an opportunity to resubmit their petition in a manner that meets both statutory and regulatory requirements.
2. Paragraph (2) provides that if the Executive Director determines that the petition is complete, the petitioner will be notified that either:
 - (A) The petition has been denied and will be provided an explanation of the denial; or,
 - (B) The petition has been approved, either in whole or in part, and if the Executive Director has determined that additional adoptions, amendments or repeals will be necessary.

Government Code section 11340.7(a) provides that the petitioner must be notified of any decision to deny or approve (schedule) a petition. Government Code section 11340.7(b) allows the state agency, to approve or deny in part and take any other action as it may be warranted by the petition. This means that the Commission is not limited to only making the adoptions, amendments, or repeals provided in the petition, but can instead make other adoptions, amendments, or repeals, as long as the petitioner is notified of such a decision. Providing these requirements here, allows the petitioner to have the full list of possibilities in one place.

Subsection (e) provides that if the Executive Director has determined that the petition has been approved, either in whole or in part, the Executive Director will provide notice to the Commission's rulemaking list and on its website, of the Commission's intent to issue a Notice of Proposed Action including a tentative public hearing date. This section is necessary to provide clarity on what the requirement to schedule a public hearing means. As previously mentioned, the requirement in Government Code section 11340.7 that, if accepted, a state agency must schedule a public hearing within 30 days is vague and on a plain reading is impossible to meet.

There are two key timelines that prevent the 30-day requirement in Government Code section 11340.7 from meaning publishing in the Notice Register.

- Submit and review by the Department of Finance (30 calendar days)²
- Submit the Notice of Proposed Action to the Office of Administrative Law for publication in the Notice Register (10-16 calendar days)³

Combined these two parts of the timeline already exceed the 30-day period provided in Government Code section 11340.7. This is before any consideration is made for the time it takes for the Commission to actually consider the petition, propose any additional adoption, amendments, or repeals, hold any required pre-notice public meetings, gather any necessary fiscal or economic impact information, and prepare the documents necessary for submittal to the Department of Finance and Office of Administrative Law. Therefore, as the statutory requirement cannot mean the formal scheduling of the public hearing, and the specific workload requirements of the petition cannot be predicted, the proposed action provides for the notification of a tentative public hearing date.

REQUIRED DETERMINATIONS:

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon: None.

BUSINESS IMPACT:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony: This proposed action imposes no mandatory requirement on businesses. The proposed action provides the public a method of requesting the Commission consider the adoption, amendment, or repeal of a regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed action does not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the consolidated small business

² State Administrative Manual, sections 6600 through 6615; 1 CCR Appendix A)

³ 1 CA ADC § 5

definition provided in Government Code section 11346.3, subdivision (b), paragraph (4) was utilized.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures. The proposed action provides the public a method of requesting the Commission consider the adoption, amendment, or repeal of a regulation.

HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

WORKER SAFETY:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

STATE'S ENVIRONMENT:

It has been determined that the proposed action will not affect the State's environment because it has nothing to do with environmental issues.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected: No reasonable alternative has been developed or otherwise identified and brought to the attention of the Commission.